

Introduced by Senator Mendoza

February 18, 2016

An act to amend Section 4610.5 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1160, as introduced, Mendoza. Workers' compensation: utilization review.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires every employer to establish a utilization review process, and defines "utilization review" as utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, prior to, retrospectively, or concurrent with providing medical treatment services. Existing law also provides for an independent medical review process to resolve disputes over utilization review decisions, as defined.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4610.5 of the Labor Code is amended to
2 read:

1 4610.5. (a) This section applies to the following disputes:

2 (1) ~~Any~~A dispute over a utilization review decision regarding
3 treatment for an injury occurring on or after January 1, 2013.

4 (2) ~~Any~~A dispute over a utilization review decision if the
5 decision is communicated to the requesting physician on or after
6 July 1, 2013, regardless of the date of injury.

7 (b) A dispute described in subdivision (a) shall be resolved only
8 in accordance with this section.

9 (c) For purposes of this section and Section 4610.6, the
10 following definitions apply:

11 (1) “Disputed medical treatment” means medical treatment that
12 has been modified, delayed, or denied by a utilization review
13 decision.

14 (2) “Medically necessary” and “medical necessity” mean
15 medical treatment that is reasonably required to cure or relieve the
16 injured employee of the effects of his or her injury and based on
17 the following standards, which shall be applied in the order listed,
18 allowing reliance on a lower ranked standard only if every higher
19 ranked standard is inapplicable to the employee’s medical
20 condition:

21 (A) The guidelines adopted by the administrative director
22 pursuant to Section 5307.27.

23 (B) Peer-reviewed scientific and medical evidence regarding
24 the effectiveness of the disputed service.

25 (C) Nationally recognized professional standards.

26 (D) Expert opinion.

27 (E) Generally accepted standards of medical practice.

28 (F) Treatments that are likely to provide a benefit to a patient
29 for conditions for which other treatments are not clinically
30 efficacious.

31 (3) “Utilization review decision” means a decision pursuant to
32 Section 4610 to modify, delay, or deny, based in whole or in part
33 on medical necessity to cure or relieve, a treatment
34 recommendation or recommendations by a physician prior to,
35 retrospectively, or concurrent with, the provision of medical
36 treatment services pursuant to Section 4600 or subdivision (c) of
37 Section 5402.

38 (4) Unless otherwise indicated by context, “employer” means
39 the employer, the insurer of an insured employer, a claims

1 administrator, or a utilization review organization, or other entity
2 acting on behalf of any of them.

3 (d) If a utilization review decision denies, modifies, or delays
4 a treatment recommendation, the employee may request an
5 independent medical review as provided by this section.

6 (e) A utilization review decision may be reviewed or appealed
7 only by independent medical review pursuant to this section.
8 Neither the employee nor the employer shall have any liability for
9 medical treatment furnished without the authorization of the
10 employer if the treatment is delayed, modified, or denied by a
11 utilization review decision unless the utilization review decision
12 is overturned by independent medical review in accordance with
13 this section.

14 (f) As part of its notification to the employee regarding an initial
15 utilization review decision that denies, modifies, or delays a
16 treatment recommendation, the employer shall provide the
17 employee with a form not to exceed two pages, prescribed by the
18 administrative director, and an addressed envelope, which the
19 employee may return to the administrative director or the
20 administrative director's designee to initiate an independent
21 medical review. The employer shall include on the form any
22 information required by the administrative director to facilitate the
23 completion of the independent medical review. The form shall
24 also include all of the following:

25 (1) Notice that the utilization review decision is final unless the
26 employee requests independent medical review.

27 (2) A statement indicating the employee's consent to obtain any
28 necessary medical records from the employer or insurer and from
29 any medical provider the employee may have consulted on the
30 matter, to be signed by the employee.

31 (3) Notice of the employee's right to provide information or
32 documentation, either directly or through the employee's physician,
33 regarding the following:

34 (A) The treating physician's recommendation indicating that
35 the disputed medical treatment is medically necessary for the
36 employee's medical condition.

37 (B) Medical information or justification that a disputed medical
38 treatment, on an urgent care or emergency basis, was medically
39 necessary for the employee's medical condition.

(C) Reasonable information supporting the employee's position that the disputed medical treatment is or was medically necessary for the employee's medical condition, including all information provided to the employee by the employer or by the treating physician, still in the employee's possession, concerning the employer's or the physician's decision regarding the disputed medical treatment, as well as any additional material that the employee believes is relevant.

(g) The independent medical review process may be terminated at any time upon the employer's written authorization of the disputed medical treatment.

(h) (1) The employee may submit a request for independent medical review to the division no later than 30 days after the service of the utilization review decision to the employee.

(2) If at the time of a utilization review decision the employer is also disputing liability for the treatment for any reason besides medical necessity, the time for the employee to submit a request for independent medical review to the administrative director or administrative director's designee is extended to 30 days after service of a notice to the employee showing that the other dispute of liability has been resolved.

(3) If the employer fails to comply with subdivision (f) at the time of notification of its utilization review decision, the time limitations for the employee to submit a request for independent medical review shall not begin to run until the employer provides the required notice to the employee.

(4) A provider of emergency medical treatment when the employee faced an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, may submit a request for independent medical review on its own behalf. A request submitted by a provider pursuant to this paragraph shall be submitted to the administrative director or administrative director's designee within the time limitations applicable for an employee to submit a request for independent medical review.

(i) An employer shall not engage in any conduct that has the effect of delaying the independent review process. Engaging in that conduct or failure of the employer to promptly comply with this section is a violation of this section and, in addition to any other fines, penalties, and other remedies available to the

1 administrative director, the employer shall be subject to an
2 administrative penalty in an amount determined pursuant to
3 regulations to be adopted by the administrative director, not to
4 exceed five thousand dollars (\$5,000) for each day that proper
5 notification to the employee is delayed. The administrative
6 penalties shall be paid to the Workers' Compensation
7 Administration Revolving Fund.

8 (j) For purposes of this section, an employee may designate a
9 parent, guardian, conservator, relative, or other designee of the
10 employee as an agent to act on his or her behalf. A designation of
11 an agent executed prior to the utilization review decision shall not
12 be valid. The requesting physician may join with or otherwise
13 assist the employee in seeking an independent medical review,
14 and may advocate on behalf of the employee.

15 (k) The administrative director or his or her designee shall
16 expeditiously review requests and immediately notify the employee
17 and the employer in writing as to whether the request for an
18 independent medical review has been approved, in whole or in
19 part, and, if not approved, the reasons therefor. If there appears to
20 be any medical necessity issue, the dispute shall be resolved
21 pursuant to an independent medical review, except that, unless the
22 employer agrees that the case is eligible for independent medical
23 review, a request for independent medical review shall be deferred
24 if at the time of a utilization review decision the employer is also
25 disputing liability for the treatment for any reason besides medical
26 necessity.

27 (l) Upon notice from the administrative director that an
28 independent review organization has been assigned, the employer
29 shall provide to the independent medical review organization all
30 of the following documents within 10 days of notice of assignment:

31 (1) A copy of all of the employee's medical records in the
32 possession of the employer or under the control of the employer
33 relevant to each of the following:

34 (A) The employee's current medical condition.

35 (B) The medical treatment being provided by the employer.

36 (C) The disputed medical treatment requested by the employee.

37 (2) A copy of all information provided to the employee by the
38 employer concerning employer and provider decisions regarding
39 the disputed treatment.

1 (3) A copy of any materials the employee or the employee's
2 provider submitted to the employer in support of the employee's
3 request for the disputed treatment.

4 (4) A copy of any other relevant documents or information used
5 by the employer or its utilization review organization in
6 determining whether the disputed treatment should have been
7 provided, and any statements by the employer or its utilization
8 review organization explaining the reasons for the decision to
9 deny, modify, or delay the recommended treatment on the basis
10 of medical necessity. The employer shall concurrently provide a
11 copy of the documents required by this paragraph to the employee
12 and the requesting physician, except that documents previously
13 provided to the employee or physician need not be provided again
14 if a list of those documents is provided.

15 (m) Any newly developed or discovered relevant medical
16 records in the possession of the employer after the initial documents
17 are provided to the independent medical review organization shall
18 be forwarded immediately to the independent medical review
19 organization. The employer shall concurrently provide a copy of
20 medical records required by this subdivision to the employee or
21 the employee's treating physician, unless the offer of medical
22 records is declined or otherwise prohibited by law. The
23 confidentiality of medical records shall be maintained pursuant to
24 applicable state and federal laws.

25 (n) If there is an imminent and serious threat to the health of
26 the employee, as specified in subdivision (c) of Section 1374.33
27 of the Health and Safety Code, all necessary information and
28 documents required by subdivision (l) shall be delivered to the
29 independent medical review organization within 24 hours of
30 approval of the request for review.

31 (o) The employer shall promptly issue a notification to the
32 employee, after submitting all of the required material to the
33 independent medical review organization, that lists documents
34 submitted and includes copies of material not previously provided
35 to the employee or the employee's designee.